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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,495	09/22/2003	Jesse L. Hearne	8632.2C	2280

7590

05/05/2005

Mr. Lynn G. Foster
602 East 300 South
Salt Lake City, UT 84102

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,495

Applicant(s)

HEARNE, JESSE L.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/22/05 & 9/22/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-14 and 17 is/are rejected.
- 7) ☒ Claim(s) 3,11,15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 14 is objected to because of the following informalities: the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 is directed to an attachment system. However, the claim attempts to draw a connection between the attachment system and a wall or a floor. The applicant is reminded that the floor and the wall are not positive parts of the claim limitations. If the applicant wishes for the floor and the wall to be considered, he must positively claim the floor and the wall. Until further notice, the claim has been examined as only the attachment system, not including the wall or floor.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,976,075 to KAVECKIS et al. KAVECKIS et al. discloses an attachment system including first (16d) and second (16b) members, a hinge member (16c) such that the first (16d) and second (16b) pivot with respect to the hinge member (16c) between an assembly position and a final position. Regarding claim 2, KAVECKIS et al. discloses the use of a fastener (18) extending through both the first (16d) and second (16b) members. In reference to claim 4, the first (16d) and second (16b) members are "substantially" parallel. Regarding claim 6, the attachment system is an elongated strap wherein the first (16d) and second (16b) members bendable about a fold portion (F), see the marked attachment. In reference to claim 9, the hinge (16c), first (16d) and second (16b) each lie flush with the wall.

Claims 1,5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,678,379 to QUATTROCIOCCHI. QUATTROCIOCCHI discloses an attachment system including first (15) and second (16) members, a hinge member (12) such that the first (15) and second (16) pivot with respect to the hinge member (12) between an assembly position and a final position. Regarding claim 5, the first (15) and second (16) members each have aligned holes (22). In reference to claim 8, QUATTROCIOCCHI discloses the use of indicia (14).

Claims 10,12-14 and 17 are rejected, as best understood, under 35 U.S.C. 102(b) as being anticipated by US Patent #5,678,379 to QUATTROCIOCCHI. In reference to the 35 USC 112 rejection noted above, QUATTROCIOCCHI discloses an attachment system including base (15) and attachment (16) portion, a hinge portion (12)

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such that the base (15) and attachment (16) portions pivot with respect to the hinge portion (12) between an assembly position and a final position, and a fastener (column 2, lines 49-50), insertable through the base (15) and attachment (16) portions.

Regarding claims 12 and 13, the applicant is reminded that the method of forming a device is not germane to the issue of patentability of the device itself. It is the final product that is given patentable weight in apparatus claims. Thus, the steps of "positioning" and "aligning" has not been given patentable weight. In reference to claim 14, the attachment system of QUATTROCIOCCHI includes a plurality of fastener holes (22). Regarding claim 17, the attachment system of QUATTROCIOCCHI, in its original position, is substantially flat.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,678,379 to QUATTROCIOCCHI. QUATTROCIOCCHI discloses the use of a concrete anchor (24) to attach the first (16d) and second (16b) members to the floor (25). QUATTROCIOCCHI discloses the basic claimed attachment system except for explicitly detailing that his anchor is in fact a concrete anchor. Although QUATTROCIOCCHI does not detail that his anchors are specifically concrete anchors, it would have been obvious to one having ordinary skill in the art that the anchors of QUATTROCIOCCHI could be capable of being used with concrete.

Allowable Subject Matter

Claims 3,11,15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 18—20 are allowed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Yvonne M. Horton
Art Unit 3635
YMH

